

**APPENDIX H**  
**Consent Decree**

1 BARRY M. HARTMAN  
2 Acting Assistant Attorney General  
3 WILLIAM A. WEINISCHKE  
4 United States Department of Justice  
5 Environment and Natural  
6 Resource Division  
7 P.O. Box 7611  
8 Ben Franklin Station  
9 Washington, D.C. 20044  
10 Telephone: (202) 514-4592

11 GEORGE L. O'CONNELL  
12 United States Attorney  
13 Eastern District of California  
14 EDWARD KNAPP  
15 Assistant United States Attorney  
16 3305 Federal Building  
17 650 Capitol Mall  
18 Sacramento, California 95814  
19 (916) 551-2700

20 NANCY J. MARVEL  
21 Regional Counsel  
22 LAURIE J. WILLIAMS  
23 Assistant Regional Counsel  
24 U.S. Environmental Protection  
25 Agency - Region 9  
26 75 Hawthorne Street  
San Francisco, CA 94105  
Telephone: (415) 744-1387

EDWARD L. STROHBEHN, JR.  
DAVID E. MOSER  
McCutchen, Doyle, Brown  
& Enersen  
3 Embarcadero Center  
San Francisco, CA 94111  
Telephone: (415) 393-2000

27 ATTORNEYS FOR PLAINTIFF

28 ATTORNEYS FOR DEFENDANTS

29 UNITED STATES DISTRICT COURT  
30 EASTERN DISTRICT OF CALIFORNIA

31 UNITED STATES OF AMERICA, )  
32 )  
33 Plaintiff, )  
34 )  
35 v. )  
36 )  
37 PINE CANYON LAND COMPANY, )  
38 SANTA FE PACIFIC CORPORATION, AND )  
39 CATEULLUS DEVELOPMENT CORPORATION, )  
40 )  
41 Defendants. )  
42 )

CIVIL ACTION NO.

CONSENT DECREE

## TABLE OF CONTENTS

<u>Section</u>	<u>Page</u>
I. Jurisdiction . . . . .	5
II. Parties . . . . .	6
III. Binding Effect . . . . .	6
IV. Definitions . . . . .	7
V. Purpose . . . . .	12
VI. Notice of Obligations to Successors-in-Title. . . . .	13
VII. Work to be Performed . . . . .	15
VIII. Additional Work . . . . .	24
IX. Worker Health & Safety Plan . . . . .	26
X. Periodic Review to Assure Protection of Human Health and the Environment . . . . .	26
XI. Quality Assurance/Quality Control . . . . .	26
XII. Project Coordinator . . . . .	29
XIII. Site Access . . . . .	30
XIV. Assurance of Ability to Complete Work . . . . .	32
XV. Compliance with Applicable Laws and Regulations. . . . .	33
XVI. Data Exchange: Sampling and Analyses . . . . .	33
XVII. Retention of Records . . . . .	34
XVIII. Reservation of Rights . . . . .	35
XIX. Reimbursement of Future Response/Oversight Costs . . . . .	36
XX. Reimbursement of Past Costs . . . . .	40
XXI. Stipulated Penalties . . . . .	41

TABLE OF CONTENTS (Cont'd)

<u>Section</u>	<u>Page</u>
XXII. Force Majeure . . . . .	46
XXIII. Dispute Resolution . . . . .	49
XXIV. Form of Notice . . . . .	52
XXV. Modification . . . . .	53
XXVI. Admissibility of Data . . . . .	54
XXVII. Contribution Protection . . . . .	54
XXVIII. Covenant Not to Sue . . . . .	55
XXIX. Waiver of Defenses . . . . .	59
XXX. Community Relations . . . . .	59
XXXI. Lodging and Public Participation . . . . .	60
XXXII. Consistency with the NCP . . . . .	60
XXXIII. Indemnification and Insurance . . . . .	61
XXXIV. Other Claims . . . . .	63
XXXV. Continuing Jurisdiction . . . . .	63
XXXVI. Representative Authority . . . . .	64
XXXVII. Effective Date . . . . .	64
XXXVIII. Severability . . . . .	65
XXXIX. Certification of Completion . . . . .	65
XL. Termination and Satisfaction . . . . .	66
XLI. Section Headings . . . . .	67
XLII. Counterparts. . . . .	67
LIST OF APPENDICES . . . . .	71

CONSENT DECREE

This Consent Decree is made and entered into by Plaintiff, the United States of America ("United States"), on behalf of the Administrator of the United States Environmental Protection Agency ("EPA"), and by the following Defendants (hereinafter referred to as "Defendants"): Pine Canyon Land Company, Santa Fe Pacific Corporation, and Catellus Development Corporation. Plaintiff and Defendants are hereinafter collectively referred to as the "Parties".

A. WHEREAS, the United States has filed concurrently with this Consent Decree a complaint in this matter pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §§ 9601 et seq., as amended by the Superfund Amendments and Reauthorization Act of 1986, Pub. L. No. 99-499, 100 Stat. 1613 (1986) ("CERCLA"), seeking to compel the Defendants to perform remedial actions and to recover response costs that have been and will be incurred by the United States in response to releases and threatened releases of hazardous substances from the facility which EPA has designated as the Johns-Manville Coalinga Mill Area Operable Unit ("Mill Area" or "Site") located in Fresno County, California.

B. WHEREAS, in accordance with Section 121(f)(1)(F) of CERCLA, 42 U.S.C. §9621(f)(1)(F), EPA notified the State of California (the "State") on January 30, 1991 of negotiations with potentially responsible parties regarding the scope of the

1 remedial design and remedial action for the Site, and EPA has  
2 provided the State with an opportunity to participate in such ne-  
3 gotiations and be a party to any settlement.

4 C. WHEREAS, the Site consists principally of an abandoned  
5 asbestos mill, related asbestos process waste tailings and a  
6 retention dam located on a 557 acre tract of land at an elevation  
7 between approximately 2800 and 3000 feet in upper Pine Canyon on  
8 the southern flank of the Joaquin Ridge in the Diablo Range,  
9 which is part of the Coastal Range Mountains in western Fresno  
10 County, California; and the nearest population center is the City  
11 of Coalinga (population 8250), which is located approximately 27  
12 kilometers (17 miles) to the southeast; an asbestos milling  
13 operation was conducted at the Site from approximately 1962 to  
14 mid-1974; during this twelve year period, asbestos ore was  
15 processed and sorted and asbestos mill tailings were periodically  
16 moved into the eastern fork of Pine Canyon Creek; an estimated  
17 340,000 cubic meters (450,000 cubic yards) of asbestos ore and  
18 asbestos tailings remain at the Site; in November 1975, the  
19 Coalinga Asbestos Company assigned its lease to Marmac Resources  
20 Company ("Marmac"), which used the Site to conduct a chromite  
21 milling operation; Marmac transported asbestos-containing  
22 chromite ore to the Site, where the chromite rich fraction was  
23 extracted; asbestos containing materials were disposed of at the  
24 Site; and Marmac conducted milling operations at the Site for  
25 more than a year.

1 D. WHEREAS, pursuant to Section 105(a)(8)(B) of CERCLA, 42  
2 U.S.C. § 9605(a)(8)(B), EPA placed the Coalinga Asbestos Mine  
3 Site on the National Priorities List ("NPL") on September 21,  
4 1984, 49 Fed.Reg. 37070 (1984).

5 E. WHEREAS, on November 16, 1987, the Southern Pacific Land  
6 Company (with respect to the Site, a predecessor in interest to  
7 Defendant Pine Canyon Land Company) signed an Administrative Or-  
8 der on Consent to perform a Remedial Investigation ("RI") and  
9 Feasibility Study ("FS") for the Site.

10 F. WHEREAS, the SFP Railroad Company (the former name of  
11 Pine Canyon Land Company) completed the RI Report, which EPA ap-  
12 proved on January 17, 1990, and the FS Report, which EPA approved  
13 on May 3, 1990; and, on May 25, 1990, pursuant to Section 117 of  
14 CERCLA, 42 U.S.C. § 9617, EPA issued a public notice concerning  
15 EPA's proposed remedial action for the Site and the public com-  
16 ment period.

17 G. WHEREAS, the decision by EPA on the remedial action to  
18 be implemented at the Site is embodied in a final Record of Deci-  
19 sion ("ROD"), dated September 21, 1990, on which the State had a  
20 reasonable opportunity to review and comment.

21 H. WHEREAS, in accordance with Section 121(d)(1) of CERCLA,  
22 42 U.S.C. §9621(d)(1), the Parties agree that the remedy selected  
23 by EPA in the ROD will attain a degree of cleanup at the Site,  
24 and control the potential for releases from the Site, such that  
25 protection of human health and the environment at the Site is as-  
26 sured.

1 I. WHEREAS, the Parties recognize, and the Court by enter-  
2 ing this Consent Decree finds, that implementation of this Con-  
3 sent Decree will expedite the cleanup of the Site and will avoid  
4 prolonged and complicated litigation between the Parties, and  
5 that entry of this Consent Decree is in the public interest.

6 J. WHEREAS, pursuant to Section 122 of CERCLA, 42 U.S.C.  
7 §9622, the United States and Defendants have each stipulated and  
8 agreed to the making and entry of this Consent Decree ("Decree"  
9 or "Consent Decree").

10 K. WHEREAS, the Parties agree that settlement of this matter  
11 and entry of this Decree are made in good faith prior to the  
12 taking of any testimony and in an effort to avoid further expen-  
13 sive and protracted litigation, but without any admission as to  
14 any legal or factual matter except for Defendants' consent to  
15 jurisdiction for purposes of entry and enforcement of this Con-  
16 sent Decree as provided above, and without any admission as to  
17 liability for any purpose.

18 L. WHEREAS, the Parties agree that the execution of this  
19 Decree by Defendants does not constitute and shall not be con-  
20 strued to constitute an admission or acknowledgment of any  
21 liability or responsibility for the Ponding Basin at the Califor-  
22 nia Aqueduct.

23 M. WHEREAS, Defendants and EPA agree that the remedy  
24 selected in the ROD and incorporated herein, and which Defendants  
25 agree to implement requires remediation only of the Mill Area  
26 Operable Unit, as defined in Section IV.K below, and does not in-  
27  
28



1 clude "The Ponding Basin at the California Aqueduct," as that  
2 area is defined in the ROD at p.1 of the Decision Summary, or any  
3 other area.

4 N. WHEREAS, EPA has determined that entities in addition to  
5 Defendants are potentially responsible for the releases or  
6 threatened release of hazardous substances at the Site.

7 O. WHEREAS, EPA has determined that the actions required by  
8 this Decree are necessary to protect the public health, welfare  
9 and the environment and are consistent with Section 121 of  
10 CERCLA, 42 U.S.C. §9621, and with the NCP, 40 C.F.R. Part 300,  
11 that the actions required by this Consent Decree are a necessary  
12 response and that costs incurred for such work are necessary  
13 response costs.

14 NOW THEREFORE, it is ORDERED, ADJUDGED, AND DECREED as fol-  
15 lows:

16  
17 I. JURISDICTION

18 The Court has jurisdiction over the subject matter of this  
19 action and the signatories to this Consent Decree pursuant to  
20 Sections 106, 107, 113 and 122 of CERCLA, 42 U.S.C. §§ 9606,  
21 9607, 9613 and 9622, and 28 U.S.C. §§ 1331, 1345. Defendants  
22 shall not challenge the Court's jurisdiction to enter and enforce  
23 this Consent Decree. Defendants listed in Section II (Parties)  
24 waive service of summons and, for the purpose of this Consent  
25 Decree, agree to submit themselves to the jurisdiction and venue  
26 of this Court.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

II. PARTIES

The parties to this Consent Decree are the United States of America and Defendants. Defendants are:

Pine Canyon Land Company;  
Santa Fe Pacific Corporation; and  
Catellus Development Corporation.

The participation in this Consent Decree of Santa Fe Pacific Corporation (parent corporation of Pine Canyon Land Company, the current owner of the Site) and Catellus Development Corporation (successor to the Santa Fe Pacific Realty Corporation, the parent corporation of Southern Pacific Land Company, the immediate past owner of the Site) shall not be deemed to be evidence of, or an admission for any purpose, that either corporation possesses or exercises control over the operation of their respective subsidiaries.

III. BINDING EFFECT

This Consent Decree shall apply to and be binding upon the signatories to this Consent Decree, their officers, directors, officials, successors, and assigns and upon all persons, contractors, and consultants acting under or for Defendants, or the United States or EPA. No change in ownership or corporate or partnership status will in any way alter the Defendants' responsibilities under this Consent Decree. The Defendants shall provide a copy of this Consent Decree, as entered, and shall

1 provide all relevant modifications to the Consent Decree, as ap-  
2 propriate, to each person, including all contractors and sub-  
3 contractors, at the time any such person is retained to perform  
4 the work contemplated by this Decree, and shall condition any  
5 contract for the work upon compliance with this Consent Decree.

6 Defendants agree that they are jointly and severally liable  
7 for compliance with all provisions of this Consent Decree. In  
8 the event of the inability to pay or insolvency of any one or  
9 more of Defendants, regardless of whether or not that Defendant  
10 or Defendants enter into formal bankruptcy proceedings, or in the  
11 event that for any other reason one or more of Defendants do not  
12 participate in the implementation of the Work, the remaining  
13 Defendants agree to fully comply with the terms and conditions of  
14 this Consent Decree.

#### 15 16 IV. DEFINITIONS

17 Unless otherwise expressly provided herein or below, terms  
18 used in this Consent Decree which are defined in CERCLA, or in  
19 regulations promulgated under CERCLA, shall have the meaning as-  
20 signed to them in the statute or regulations. Whenever terms  
21 listed below are used in this Consent Decree or in the Exhibits  
22 or Appendices attached hereto or incorporated hereunder, the fol-  
23 lowing definitions shall apply:

- 24  
25 A. "Appendix A" shall mean the Record Of Decision (ROD)  
26 for the Site dated September 21, 1990.  
27  
28

- 1 B. "Appendix B" shall mean the Scope of Work ("SOW") for  
2 the Site.
- 3 C. "CERCLA" shall mean the Comprehensive Environmental  
4 Response, Compensation, and Liability Act, 42 U.S.C. §  
5 9601 et seq., as amended by the Superfund Amendments  
6 and Reauthorization Act of 1986, Pub. L. No. 99-499,  
7 Stat. 1613 (1986).
- 8 D. "Contractor" shall mean the individual, company or com-  
9 panies retained by or on behalf of Defendants to under-  
10 take and complete the Work.
- 11 E. "Day" shall mean a calendar day unless expressly stated  
12 to be a working day. "Working day" shall mean a day  
13 other than a Saturday, Sunday or legal holiday. In  
14 computing any period of time under this Consent Decree,  
15 where the last day would fall on a Saturday, Sunday, or  
16 legal holiday, the period shall run until the end of  
17 the next working day.
- 18 F. "Defendants" shall mean those parties identified as  
19 Defendants and listed as such in Section II (Parties)  
20 of this Consent Decree.
- 21 G. "DOHS" shall mean the California Department of Health  
22 Services.
- 23 H. "EPA" shall mean the United States Environmental  
24 Protection Agency.
- 25 I. "Future Liability" shall mean liability arising after  
26 EPA's Certificate of Completion is issued pursuant to  
27 Section XXXIX (Certification of Completion).
- 28

1 J. "Future Response Costs" shall mean all costs incurred  
2 by the United States pursuant to CERCLA in overseeing  
3 the Work, including but not limited to payroll costs,  
4 contractor costs, travel costs, laboratory costs, in-  
5 direct costs, costs incurred pursuant to Section XIII  
6 (Site Access), and the costs of reviewing or developing  
7 plans, reports and other items pursuant to this Consent  
8 Decree, verifying the Work, or otherwise implementing  
9 or enforcing this Consent Decree, including by the  
10 United States Department of Justice. Future Response  
11 Costs shall also include costs incurred by the United  
12 States, including by the United States Department of  
13 Justice, pursuant to CERCLA in connection with the Site  
14 after November 30, 1990 (the date on which accounting  
15 for Past Response Costs ends pursuant to Section XX)  
16 and prior to the effective date of this Consent Decree.

17 K. "Mill Area" or the "Site" means the area defined in the  
18 ROD as the "JM Mill Area OU" of the Johns-Manville  
19 Coalinga Asbestos Mill NPL Site (Coalinga Mine Site);  
20 the Mill Area is a privately owned area, which is lo-  
21 cated in the upper Pine Canyon, approximately seventeen  
22 miles (27 kilometers) northwest of Coalinga, Fresno  
23 County, California; the Site encompasses approximately  
24 2.3 square kilometers (557 acres) at an elevation be-  
25 tween approximately 2,800 and 3,000 feet, as described  
26 in the ROD and depicted on the map included as Figure 1  
27 in the ROD; the Mill Area includes asbestos mill tail-  
28

1           ings, an asbestos ore storage/loading area, an aban-  
2           doned mill building, an inactive chromite mine (the  
3           Railroad Mine), filled in chromite settling ponds and  
4           debris.

5           L.    "National Contingency Plan" or "NCP" shall mean the Na-  
6           tional Oil and Hazardous Substances Pollution Contin-  
7           gency Plan, 40 C.F.R. Part 300, as revised and  
8           repromulgated pursuant to Section 105 of CERCLA, 42  
9           U.S.C. § 9605.

10          M.    "Parties" means the United States, on behalf of EPA,  
11          and the Defendants.

12          N.    "Past Response Costs" shall mean all costs incurred by  
13          EPA pursuant to CERCLA in connection with the Site  
14          prior to and including November 30, 1990.

15          O.    "Performance Standards" shall mean those cleanup stan-  
16          dards, standards of control, and other substantive re-  
17          quirements, criteria, or limitations set forth in the  
18          ROD and the SOW.

19          P.    "Plaintiff" or "United States" means the United States  
20          of America, on behalf of EPA.

21          Q.    "Record of Decision" or "ROD" shall mean the document  
22          signed by the EPA Region IX Regional Administrator on  
23          September 21, 1990, which selects and describes the  
24          remedy to be implemented at the Site, and which is at-  
25          tached hereto as Appendix A.

- 1 R. "Remedial Action" and "Remedial Action Work" shall mean  
2 the phases of the Work involving the construction of  
3 the remedy in accordance with the Remedial Design docu-  
4 ments, the ROD and this Consent Decree.
- 5 S. "Remedial Action Reports" shall mean the reports sub-  
6 mitted by Defendants pursuant to this Consent Decree,  
7 detailing the Remedial Action Work and the results of  
8 the Remedial Action implementation.
- 9 T. "Remedial Design" and "Remedial Design Work" shall mean  
10 the phases of the Work wherein engineering plans and  
11 technical specifications are developed for implementa-  
12 tion of the Remedial Action, in accordance with the ROD  
13 and this Consent Decree.
- 14 U. "Remedial Design Reports" shall mean the reports sub-  
15 mitted by Defendants pursuant to this Consent Decree,  
16 detailing the Remedial Design Work.
- 17 V. "Scope of Work" or "SOW" shall mean the scope of work  
18 for implementation of the Remedial Design, Remedial Ac-  
19 tion and operation and maintenance of the Remedial Ac-  
20 tion at the Site, as set forth in Appendix B to this  
21 Consent Decree.
- 22 W.. "State" shall mean the State of California.
- 23 X. "Work" shall mean the implementation, in accordance  
24 with Section VII hereof (Work to be Performed), of the  
25 Record of Decision and the SOW, as the SOW is defined  
26 in this Consent Decree and as it may be modified pur-  
27 suant to the provisions of this Consent Decree.
- 28

1 Y. "Workplan" or "Workplans" shall mean the workplan  
2 developed by the Defendants which details the Work to  
3 be conducted pursuant to this Consent Decree.  
4

5 V. PURPOSE

6 The purposes of this Consent Decree are to serve the public  
7 interest by protecting the public health, welfare, and the en-  
8 vironment from releases and threatened releases of hazardous sub-  
9 stances at or from the Site by the implementation by Defendants  
10 of the Work; to obtain reimbursement from Defendants for certain  
11 of Plaintiff's Past and Future Response Costs; and to settle all  
12 claims against Defendants asserted by Plaintiff with regard to  
13 this Site in the Complaint filed in this matter.

14 All Parties agree and the EPA and the Court hereby determine  
15 that the remedy selected in the ROD is consistent with the Na-  
16 tional Oil and Hazardous Substances Pollution Contingency Plan,  
17 40 C.F.R. Part 300 (hereinafter "National Contingency Plan" or  
18 "NCP"). As is required by Section 121 of CERCLA, 42 U.S.C.  
19 §9621, the Work performed in the implementation of this Remedial  
20 Action shall meet the substantive standards of all legally  
21 "applicable requirements" and "relevant and appropriate require-  
22 ments" (collectively "ARARS"), as those terms are defined in 40  
23 C.F.R. § 300.5, as generally described in CERCLA Compliance with  
24 Other Environmental Statutes, October 2, 1985 (50 Fed. Reg.  
25 47946, November 20, 1985). EPA has identified the ARARS for the  
26  
27  
28



1 Remedial Action at the Site. Those ARARs are set forth in the  
2 ROD, and are summarized in Section VII.A.15 of this Consent  
3 Decree.

4  
5 VI. NOTICE OF OBLIGATIONS TO SUCCESSORS-IN-TITLE

6 A. Within sixty (30) days after the entry of this Consent  
7 Decree, Defendants shall cause to be recorded a certified copy of  
8 this Consent Decree with the Recorder's Office, Fresno County,  
9 State of California.

10 B. The obligations of each Defendant who owns any interest  
11 in property included in the Site, with respect to the provision  
12 of access under Section XIII (Site Access) and the implementation  
13 of institutional controls under Section VII (Work To Be  
14 Performed), shall, to the extent permitted by law, run with the  
15 land and shall be binding upon any and all such Defendants and  
16 any and all persons who subsequently acquire any such interest or  
17 portion thereof (hereinafter "successors-in-title"). Within  
18 sixty (60) days after the entry of this Consent Decree, each  
19 Defendant who owns any interest in property included in the Site  
20 shall record at the Recorder's Office, Fresno County, State of  
21 California, or other office where land ownership and transfer  
22 records are maintained for the property, a notice of obligation  
23 to provide access and related covenants in a form approved by  
24 EPA.

25 C. Any Defendant that owns an interest in property included  
26 in the Site shall, prior to the conveyance of any such interest,  
27 give written notice of this Consent Decree to the grantee and  
28

1 written notice to EPA of the proposed conveyance, the name and  
2 address of the grantee, and the date on which notice of the Con-  
3 sent Decree was given to the grantee. In the event of any such  
4 conveyance, all of Defendants' obligations under this Consent  
5 Decree shall remain in effect.

6  
7 VII. WORK TO BE PERFORMED

8 A. General Obligations Regarding the Remedial Action

9 1. Defendants shall finance and perform, at their expense,  
10 the implementation of the Work as required by this Decree and the  
11 Appendices hereto.

12 2. Except upon agreement by all Parties, no Work or addi-  
13 tional work pursuant to Section VIII (Additional Work) shall be  
14 required to be performed pursuant to this Consent Decree except  
15 those tasks necessary to fully implement the ROD, as provided  
16 herein.

17 3. Notwithstanding any approvals which may be granted by  
18 the United States or other governmental entities, Defendants  
19 shall assume any and all liability of the United States arising  
20 from or relating to Defendants' acts or omissions or the acts or  
21 omissions of any of their contractors, subcontractors, or any  
22 other person acting on Defendants' behalf (except to the extent  
23 such contractors, subcontractors or other persons are acting at  
24 the direction of EPA pursuant to Section VII.A.16) in the perfor-  
25 mance of the Work or Defendants failure to perform fully or com-  
26 plete the Work.

1           4. In accordance with Section XII (Project Coordinator),  
2 Defendants shall appoint a representative ("Project Coordinator")  
3 designated by them to act on their behalf to execute the Work.

4           5. The Defendants shall perform the Work for the Site in ac-  
5 cordance with all of the provisions of this Decree, and in accor-  
6 dance with the ROD, attached hereto as Appendix A, the Scope of  
7 Work ("SOW") attached hereto as Appendix B, and any modifications  
8 thereto which are approved by pursuant to Section XXV  
9 (Modification) of this Decree. The ROD, the SOW, and all such  
10 modifications are hereby incorporated by reference and made a  
11 part of this Decree. In the event of any conflict between the  
12 Decree and the SOW or any other EPA approved document incor-  
13 porated into this Decree, the Decree shall control. In the event  
14 of any conflict between the ROD and the Decree, the Decree shall  
15 control, but nothing herein shall preclude the United States from  
16 moving the Court to approve a modification of the Decree in ac-  
17 cordance with Section XXV (Modification) to conform to the ROD.

18           6. As is further described in the ROD and the SOW, the  
19 major components of the selected remedy for the Site are as fol-  
20 lows:

21           a) Constructing a cross canyon stream diversion to  
22 divert water flow away from the asbestos tailings pile  
23 in the east fork of Pine Canyon Creek;

24           b) Improving the existing sediment trapping dam to  
25 minimize the potential for the release of asbestos into  
26 Pine Canyon Creek;

27           c) Constructing a fence along the road through the Site  
28

1 and around the disturbed areas to limit access;

2 d) Conducting a revegetation pilot project to determine  
3 whether revegetation is a practical means of increasing  
4 stability and minimizing erosion of the disturbed  
5 areas and implementing revegetation if it is found to be  
6 feasible;

7 e) Dismantling of the mill building and disposal of  
8 debris;

9 f) Performing operation and maintenance activities;

10 g) Road paving or an appropriate engineering  
11 alternative; and

12 h) Filing deed restrictions.  
13

14 7. All Remedial Design Work to be performed by Defendants  
15 pursuant to this Consent Decree shall be under the direction and  
16 supervision of a qualified professional engineer. Within thirty  
17 (30) days after the entry of this Consent Decree by the Court and  
18 prior to the initiation of the Remedial Design Work for the Site,  
19 the Defendants shall notify EPA, in writing, of the name, title,  
20 and qualifications of the supervising engineer proposed to be  
21 used in carrying out the Remedial Design Work to be performed  
22 pursuant to this Consent Decree. Selection of any such engineer  
23 shall be subject to disapproval by EPA. If EPA disapproves of  
24 the selection of any supervising engineer, the Defendants shall  
25 submit a list of engineers to EPA within thirty (30) days of  
26 receiving written notice of the disapproval of the engineer pre-  
27 viously selected. Defendants may select from this list any one  
28

1 of the engineers which is approved by EPA. Within twenty (20)  
2 days after EPA provides approval of any engineers from Defen-  
3 dants' list, Defendants shall notify EPA of the name of the en-  
4 gineer which they have selected.

5 8. All Remedial Action Work to be performed by the Defen-  
6 dants pursuant to this Consent Decree shall be under the direc-  
7 tion and supervision of a qualified professional engineer and  
8 performed by a qualified contractor. Within sixty (60) days  
9 after entry of this Decree by the Court and prior to the initia-  
10 tion of Remedial Action Work at the Site, the Defendants shall  
11 notify EPA, in writing, of the name, title, and qualifications of  
12 the supervising engineer. Within forty-five (45) days of EPA's  
13 approval of the Final Design Submittals, as provided in Appendix  
14 B, Defendants shall notify EPA in writing of the names of the  
15 principal contractors and/or subcontractors proposed to be used  
16 in carrying out the Remedial Action Work pursuant to this Consent  
17 Decree. Selection of any such engineer and contractor and/or  
18 subcontractor shall be subject to disapproval by the EPA in ac-  
19 cordance with the provisions of Paragraph 7 of this Section. If  
20 at any time thereafter Defendants propose to change the supervis-  
21 ing engineer or principal contractor and/or subcontractors,  
22 Defendants shall give written notice to EPA and shall obtain ap-  
23 proval from EPA before the new supervising engineer or principal  
24 contractor and/or subcontractor performs any work under this Con-  
25 sent Decree. All work performed by Defendants shall be performed  
26  
27  
28

1 by qualified engineers and/or contractors or subcontractors in  
2 accordance with the conditions and schedules specified in this  
3 Decree.

4 9. The Defendants shall be liable to EPA for any acts or  
5 omissions of any of their contractors, subcontractors or any  
6 other person acting on their behalf (except to the extent such  
7 contractors, subcontractors or other persons are acting at the  
8 direction of EPA pursuant to Section VII.A.16) in the performance  
9 of the Work or their failure to perform fully or complete the  
10 Work, if such acts, omissions or performance constitutes a viola-  
11 tion of this Decree.

12 10. Within forty-five (45) days of the effective date of  
13 this Consent Decree, Defendants shall submit a draft Work Plan to  
14 EPA for the Remedial Design Work at the Site ("RD Work Plan").  
15 The draft RD Work Plan shall be developed in conformance with the  
16 ROD, the SOW, EPA Superfund Remedial Design and Remedial Action  
17 Guidance and any additional guidance documents provided to Defen-  
18 dants by EPA by the effective date of this Consent Decree.

19 11. The RD Work Plan submittal shall describe how the  
20 Defendants will implement the selected remedy at the Site and  
21 will be consistent with the SOW.

22 12. In accordance with Section VII.B below, the RD Work  
23 Plan and other required documents and reports shall be subject to  
24 review, approval and/or modification in writing by EPA. Defen-  
25 dants shall revise disapproved documents in accordance with EPA's  
26 comments and submit such revised documents to EPA within thirty  
27 (30) days after receipt of the notice of disapproval. Any dis-  
28

1 putes regarding any revised or modified document shall be  
2 resolved pursuant to Section XXIII (Dispute Resolution) of this  
3 Decree.

4 13. Defendants shall implement the Work detailed in the RD  
5 Work Plan as approved or modified by EPA pursuant to Paragraph 12  
6 above. The approved RD Work Plan shall be deemed incorporated  
7 into and made an enforceable part of this Consent Decree. Within  
8 thirty days of approval of the RD Work Plan by EPA, Defendants  
9 shall file a copy of the RD Work Plan with the Court to be incor-  
10 porated into this Consent Decree. Any noncompliance with any EPA  
11 approved reports, plans, specifications, schedules, appendices,  
12 or attachments to the RD Work Plan shall be considered a failure  
13 to comply with this Decree and shall subject Defendants to stipu-  
14 lated penalties as provided in Section XXI (Stipulated  
15 Penalties). In the event of any inconsistency between the SOW  
16 and the RD Work Plan, the SOW shall govern. All work shall be  
17 conducted in accordance with the National Contingency Plan, the  
18 EPA Superfund Remedial Design and Remedial Action Guidance (OSWER  
19 Directive No. 9355.0-4A, June 1986), and the requirements of the  
20 Consent Decree and the RD Work Plan.

21 14. The Parties acknowledge and agree that neither the SOW,  
22 the RD Work Plan, nor any approvals, permits or other permissions  
23 which may be granted by EPA related to this Consent Decree con-  
24 stitute a warranty or representation by Plaintiff that the SOW,  
25 the RD Work Plan or such other approvals or permits will achieve  
26 the standards set forth in the ROD, the SOW, and in Paragraph 15  
27 below and shall not foreclose Plaintiff from seeking performance  
28

1 of all terms and conditions of this Consent Decree. Nothing in  
2 this Consent Decree shall be construed to relieve Defendants of  
3 their obligation to achieve all standards set forth in the ROD,  
4 the SOW, and in Paragraph 15 below.

5 15. In performing the Work at the Site, Defendants shall  
6 meet the ARARs, which have been identified by EPA and specifi-  
7 cally set forth in the ROD, and which are summarized below:

8 a) Control asbestos emissions in accordance with the  
9 federal Clean Air Act, National Emission Standard for Hazardous  
10 Air Pollutants.

11 b) Conform with the particulate matter standard (PM 10)  
12 established by the Fresno County Air Pollution Control District  
13 pursuant to the California Air Resources Act.

14 c) Protect endangered species in accordance with the  
15 federal Endangered Species Act of 1973.

16 d) Minimize habitat loss in accordance with the United  
17 States Fish and Wildlife Service Mitigation Policy.

18 e) Minimize adverse impacts on waters of the United  
19 States in accordance with the Federal Water Pollution Control  
20 Act.

21 f) Comply with the substantive restrictions of Califor-  
22 nia Health and Safety Code Sections 25232(a)(1) and (a)(2).

23 g) Protect worker health and safety in accordance with  
24 the federal Occupational Safety and Health Act.



1           h) Construct engineering systems in accordance with the  
2 storm run-off and peak stream flow standards of the mining waste  
3 regulations established pursuant to the California Porter-Cologne  
4 Water Quality Act.

5           16. In the event EPA determines that the Defendants have  
6 failed to implement the Work or any portions thereof in a timely  
7 or adequate manner, EPA or its designate may perform such por-  
8 tions of the Work as EPA determines may be necessary. If the EPA  
9 performs all or portions of the Work because of the Defendants'  
10 failure to comply with their obligations under this Consent  
11 Decree, the Defendants shall reimburse the EPA for the costs of  
12 doing such work, plus penalties as set forth in Section XXI  
13 (Stipulated Penalties). EPA will provide Defendants' Project  
14 Coordinator with 20 days advance written notice of EPA's intent  
15 to perform a portion or all of the Work, unless EPA determines  
16 that a more immediate response is needed to address a threat to  
17 human health or the environment. Any disputes regarding EPA's  
18 decision(s) under this Section shall be resolved pursuant to Sec-  
19 tion XXIII (Dispute Resolution) of this Decree.

20           17. Defendants shall dispose of any materials taken offsite  
21 in compliance with EPA's Revised Procedures for Implementing  
22 Off-Site Response Actions ("Offsite Policy") (EPA OSWER Directive  
23 9834.11, November 13, 1987) and any amendments thereto.

1 B. Obligations Regarding Documents to be submitted

2 ("Deliverables"):

3 1. Monthly Progress Reports:

4 Defendants shall prepare and submit to EPA Monthly Progress  
5 Reports as required by Appendix B, the SOW.

6 2. [Reserved]

7 3. Community Relations Plan. Defendants shall prepare and  
8 submit to EPA for its approval a Community Relations Plan for  
9 soliciting public input and informing the public of the status of  
10 the Work. The plan shall provide for written communication with  
11 community members ("fact sheets") and community meetings.

12 4. Worker Health and Safety Plan. Defendants shall  
13 prepare and submit to EPA a Worker Health and Safety Plan as re-  
14 quired by Appendix B.

15 5. Remedial Design Work Plan. Defendants shall prepare  
16 and submit to EPA for its comments a Draft Remedial Design Work  
17 Plan and to EPA for its approval a Final Remedial Design Work  
18 Plan as required by Appendix B.

19 6. Preliminary Design. Defendants shall prepare and sub-  
20 mit to EPA for its comments a Preliminary Design report as re-  
21 quired by Appendix B.

22 7.. Prefinal/Final Design. As required by Appendix B,  
23 Defendants shall prepare and submit to EPA for its comments  
24 Prefinal Design Submittals and shall prepare and submit to EPA  
25 for its approval Final Design Submittals.

1           8.   Revegetation Pilot Project Work Plan. As required by  
2 Appendix B, Defendants shall prepare and submit to EPA for its  
3 comments a Draft Revegetation Pilot Project Work Plan and shall  
4 prepare and submit to EPA for its approval a Final Revegetation  
5 Pilot Project Work Plan.

6           9.   Prefinal Inspection Report. Defendants shall prepare  
7 and submit to EPA a Prefinal Inspection Report as required by Ap-  
8 pendix B.

9           10. Remedial Action Completion Report. Defendants shall  
10 prepare and submit to EPA a Remedial Action Completion Report as  
11 required by Appendix B.

12           11. Defendants shall, pursuant to the schedule in the SOW  
13 attached to this Decree as Appendix B, submit each of the above  
14 deliverables. Any failure of Defendants to submit a deliverable  
15 in compliance with the schedule will be deemed a violation of  
16 this Decree.

17           12. After review of any plan, report, draft deliverable or  
18 other item which is required to be submitted to EPA for its ap-  
19 proval pursuant to this Consent Decree or the incorporated SOW,  
20 EPA will in writing either: (a) approve the submission; (b) dis-  
21 approve the submission, notifying the Defendants of the  
22 deficiencies and requiring resubmittal within thirty (30) days;  
23 or (c) approve the submission with modifications.

24           13. After receipt of EPA's written decision pursuant to  
25 Paragraph 12 above, Defendants shall, within the time period es-  
26 tablished by this Consent Decree: (a) proceed to take action as  
27 required by the approved or modified submission; or (b) correct  
28

1 the deficiencies as determined by EPA and resubmit the plan,  
2 report, draft or other item to EPA for approval. In the event  
3 EPA determines that there are deficiencies in the submissions,  
4 Defendants shall proceed, at the written direction of EPA, to  
5 take any action required by any non-deficient portion of the sub-  
6 mission. Any disputes regarding EPA's decision(s) under this  
7 Section shall be resolved pursuant to Section XXIII (Dispute  
8 Resolution) of this Decree.

9 14. Any failure by Defendants to revise, modify or correct  
10 deficiencies as directed by EPA within the time allotted in the  
11 schedule will be deemed a violation of this Consent Decree. Im-  
12 plementation of non-deficient portions of the submission shall  
13 not relieve Defendants of any liability for stipulated penalties  
14 under Section XXI (Stipulated Penalties) with respect to the  
15 deficient portions.

16  
17 VIII. ADDITIONAL WORK

18 A. In the event that EPA or Defendants determine(s) that  
19 additional work is necessary to meet the Performance Standards or  
20 to carry out the remedy selected in the ROD, notification of such  
21 additional work shall be provided to the Project Coordinator for  
22 the other party(ies).

23 B. Within 30 days of receipt of notice from EPA pursuant to  
24 this Section that additional work is necessary, or such longer  
25 time as may be specified by EPA, Defendants shall submit for ap-  
26 proval by EPA a work plan for the additional work. The work plan  
27  
28

1 shall conform to the requirements in and shall be approved, dis-  
2 approved or modified in accordance with Section VII (Work To Be  
3 Performed) and shall be consistent with the NCP.

4 C. Any additional work determined to be necessary by Defen-  
5 dants is subject to approval by EPA.

6 D. Any additional work determined to be necessary by Defen-  
7 dants and approved by EPA, or determined to be necessary by EPA  
8 to carry out the remedy described in the ROD or to meet the Per-  
9 formance Standards, shall be completed by Defendants in accor-  
10 dance with the standards, specifications, and schedules approved  
11 by EPA.

12 E. If EPA disapproves the work plan pursuant to the provi-  
13 sions of Section VII (Work To Be Performed), Defendants, consis-  
14 tent with Section VII (Work to Be Performed), shall submit a  
15 modified plan. EPA may also approve the plan with modifications.

16 F. Defendants shall promptly implement the work plan as ap-  
17 proved or modified by EPA. Defendants may invoke the procedures  
18 set forth in Section XXIII (Dispute Resolution) (i) to dispute  
19 EPA's determination that additional work is necessary to meet the  
20 Performance Standards or to carry out the remedy selected in the  
21 ROD, or (ii) to resolve any other disputes that arise under this  
22 Section.

23 G. In the event that any deadline established in or pur-  
24 suant to this Decree for performance of any activity is dependent  
25 on the completion of any such additional work, that deadline will  
26 be extended by an amount of time equal to the time required to  
27 complete that additional work.

1  
2 IX. WORKER HEALTH AND SAFETY PLAN

3 The Worker Health and Safety Plan that the Defendants will  
4 submit pursuant to Section VII (Work to be Performed) and Appen-  
5 dix B of this Consent Decree shall be prepared in conformance  
6 with applicable state and federal requirements.  
7

8 X. PERIODIC REVIEW TO ASSURE PROTECTION  
9 OF HUMAN HEALTH AND THE ENVIRONMENT

10 Consistent with Section 121(c) of CERCLA, 42 U.S.C.  
11 § 9621(c), and any applicable regulations, Defendants shall con-  
12 duct within each five year period such study and investigation as  
13 are requested by EPA, and as are necessary to permit EPA to per-  
14 form six (6) five-year reviews to be completed within 30 years  
15 after the initiation of the remedial action. Defendants shall  
16 reimburse EPA for its costs in performing these reviews, and  
17 shall be subject to stipulated penalties for failure to pay such  
18 costs. Any dispute regarding EPA's decision(s) under this Sec-  
19 tion shall be resolved pursuant to Section XXIII (Dispute Resolu-  
20 tion) of this Decree.  
21

22 XI. QUALITY ASSURANCE/QUALITY CONTROL

23 A. The Quality Assurance/Quality Control (QA/QC) program  
24 that Defendants shall submit pursuant to Section VII (Work to be  
25 Performed) of this Consent Decree shall, where applicable, be  
26 prepared in accordance with the following EPA guidances, Interim  
27 Guidelines and specifications for Preparing Quality Assurance  
28

1 Project Plans, (QAMS-005/80) December 29, 1980, Technical  
2 Guidance Document: Construction Quality Assurance for Hazardous  
3 Waste Land Disposal Facilities, (EPA/530-SW-86-031) October,  
4 1986, and any additional EPA or EPA Region IX guidance identified  
5 by EPA in a timely fashion. Upon approval and notice by EPA to  
6 the Defendants, Defendants shall implement the QA/QC Program.

7 B. Defendants shall use QA/QC procedures which are approved  
8 pursuant to Paragraph A above, and shall utilize standard EPA  
9 chain of custody procedures, as documented in the National En-  
10 forcement Investigations Center Policies and Procedures (EPA-  
11 330/9-78-001-R) revised May, 1986, and any amendments thereto,  
12 and the National Enforcement Investigations Center Manual for the  
13 Evidence Audit of Enforcement Investigations by Contractor  
14 Evidence Audit Teams (EPA 330/9-81-003-R) April, 1984, and any  
15 amendments thereto, for all sample collection and analysis ac-  
16 tivities, unless other procedures are approved by EPA, pursuant  
17 to this Consent Decree.

18 C. In order to provide quality assurance and maintain  
19 quality control regarding all samples collected in connection  
20 with activities performed pursuant to this Decree, the Defendants  
21 shall:

22 1.. Ensure that all contracts with laboratories utilized by  
23 Defendants for analysis of samples taken pursuant to this Consent  
24 Decree shall provide for access of EPA personnel and EPA  
25 authorized representatives to verify the accuracy of laboratory  
26 results.

1           2. Ensure that any laboratory utilized by Defendants for  
2 analysis of samples taken pursuant to this Consent Decree shall  
3 perform all such analyses according to EPA methods as documented  
4 in EPA's Contract Laboratory Statement of Work for Inorganic  
5 Analysis, Multi-Media, Multi-Concentration, June 1989, or other  
6 methods approved by EPA for use pursuant to this Consent Decree,  
7 and submit all protocols to be used for analysis to EPA in the  
8 plans and documents required under this Consent Decree.

9           3. Specify that all laboratories utilized by Defendants for  
10 analysis of samples taken pursuant to this Decree shall par-  
11 ticipate in an EPA or EPA equivalent QA/QC program. As part of  
12 the QA/QC program and upon request by EPA, such laboratories  
13 shall perform at Defendants' expense analyses of samples provided  
14 by EPA to demonstrate the quality of each laboratory's data.

15           D. Sampling data generated consistent with the QA/QC  
16 program shall be admissible as evidence, without objection except  
17 as to relevance, in any proceeding under Section XXIII (Dispute  
18 Resolution) of this Decree. In any such proceeding, the parties  
19 shall be able to impeach or otherwise contest the credibility,  
20 validity, or meaning of such evidence.

21           E. Notwithstanding any provision of the Consent Decree, the  
22 United States retains all of its information gathering, inspec-  
23 tion and enforcement authorities and rights under CERCLA, and any  
24 other applicable statutes or regulations.



1 XII. PROJECT COORDINATOR

2 A. By the effective date of this Consent Decree, EPA and  
3 Defendants shall each designate a Project Coordinator, and shall  
4 notify each other in writing of the name, address, and telephone  
5 number of their Project Coordinators, to monitor the progress of  
6 the Work, to coordinate communication between EPA and the Defen-  
7 dants and to oversee the implementation of this Consent Decree.  
8 EPA and Defendants each have the right to change their respective  
9 Project Coordinator. Such a change shall be accomplished by  
10 notifying the other party in writing at least five (5) working  
11 days prior to the change. To the maximum extent possible, com-  
12 munications between Defendants and EPA and all documents, includ-  
13 ing reports, approvals, and other correspondence concerning the  
14 activities performed pursuant to the terms and conditions of this  
15 Consent Decree, shall be directed through the Project Coor-  
16 dinators.

17 B. The EPA Project Coordinator shall have the authority  
18 vested in the On-Scene Coordinator by 40 C.F.R. § 300 et seq.,  
19 including such authority as may be added by amendments to 40  
20 C.F.R. § 300, as well as the authority to ensure that the Work is  
21 performed in accordance with all applicable statutes, regula-  
22 tions, and this Consent Decree.

23 C. Defendants' Project Coordinator may assign other repre-  
24 sentatives, including other contractors, to serve as a site rep-  
25 resentative for oversight of performance of daily operations  
26  
27  
28

1 during remedial activities, and shall provide EPA with notice in  
2 writing of such assignments no later than the first day on which  
3 a site representative begins acting in that capacity.

4 D. Prior to invoking the procedures of Section XXIII  
5 (Dispute Resolution), any unresolved disputes arising between the  
6 EPA site representative and Defendants or their contractors shall  
7 be referred to the EPA and Defendants' Project Coordinators.

8  
9 XIII. SITE ACCESS

10 A. During the effective period of this Decree, Defendants  
11 shall provide the United States, EPA, the State, and their repre-  
12 sentatives, including contractors, access at all times to the  
13 Site, and any contiguous property owned or controlled by any  
14 Defendant.

15 B. To the extent that the Site where the Work is to be per-  
16 formed is presently owned or controlled by parties other than  
17 those bound by this Consent Decree or to the extent that access  
18 to or easements over property is required for the proper and com-  
19 plete performance of this Decree, Defendants shall use their best  
20 efforts to obtain access agreements from the present owners or  
21 those persons who have control over the property, including  
22 lessees, within thirty (30) days of EPA's approval of the Final  
23 Design or such longer time as is granted by EPA upon request by  
24 Defendants. For purposes of this Section, "best efforts" in-  
25 cludes but is not limited to, seeking judicial assistance and/or  
26 the payment of reasonable sums of money, based on local fair  
27 market value for such access or use, as consideration for access

1 and/or use of the property. Site access agreements shall provide  
2 access to Defendants, the United States, EPA, the parties' con-  
3 tractors, State and local agencies, and their authorized repre-  
4 sentatives.

5 C. In the event that site access agreements are not ob-  
6 tained within the thirty (30) day period (or such period as ex-  
7 tended by EPA) referred to in paragraph B above, the Defendants  
8 shall notify EPA in writing within five (5) days of the expira-  
9 tion of that period, regarding both the lack of, and efforts to  
10 obtain, such agreements. If Defendants fail to gain access  
11 within thirty (30) days, they shall continue to use best efforts  
12 to obtain access until access is granted. EPA agrees to assist  
13 Defendants in obtaining such access, to the extent that EPA  
14 determines that such assistance is appropriate. Any delay in  
15 performing any requirement under this Decree, arising from Defen-  
16 dants' inability to obtain Site access, where Defendants have  
17 made "best efforts" to obtain such access, constitutes a force  
18 majeure pursuant to Section XXII (Force Majeure).

19 D. Any person obtaining access to the Site pursuant to this  
20 provision shall comply with all applicable provisions of the  
21 Worker Health and Safety Plan as submitted pursuant to Appendix B  
22 of this Consent Decree.

23 E. Notwithstanding any provision of this Consent Decree,  
24 the United States retains all of its access authorities and  
25 rights under CERCLA and any other federal statute or authority.  
26  
27  
28

1                   XIV. ASSURANCE OF ABILITY TO COMPLETE WORK

2           A. Defendants shall demonstrate their ability to complete  
3 the Work and to pay all claims that arise from the performance of  
4 the Work by obtaining, and presenting to EPA for approval within  
5 thirty (30) calendar days after the effective date of this  
6 Decree, one of the following mechanisms in the amount of the to-  
7 tal estimated costs of the Work remaining to be performed:

8               1) A surety bond;

9               2) One or more letters of credit;

10              3) A trust fund;

11              4) A guarantee to perform the Work by one or more parent  
12 corporations or subsidiaries, or by one or more unrelated cor-  
13 porations that have a substantial business relationship with at  
14 least one of the Defendants, and a demonstration that the guaran-  
15 tor satisfies the requirements of 40 C.F.R. Part 264.143(f); or

16              5) A demonstration that at least one of the Defendants  
17 satisfies the requirements of 40 C.F.R. Part 264.143(f).

18           B. If Defendants rely on the internal financial information  
19 of one of them or on a corporate guarantee for financial as-  
20 surance, the Defendants shall annually resubmit sworn statements  
21 conveying the information required by 40 C.F.R. Part 264.143(f)  
22 on the anniversary date of the Consent Decree. If, at any time,  
23 EPA determines that the Defendant(s)' or guarantor's assets are  
24 insufficient to assure their ability to complete the Work, Defen-  
25 dants shall obtain one of the first three financial instruments  
26 listed above within thirty (30) calendar days of such EPA deter-  
27 mination. Defendants' inability to demonstrate financial ability  
28

1 to complete the Work shall not excuse performance of any ac-  
2 tivities required under this Consent Decree. Any disputes  
3 regarding EPA's decision(s) under this Section shall be resolved  
4 pursuant to Section XXIII (Dispute Resolution) of this Decree.  
5

6 XV. COMPLIANCE WITH APPLICABLE LAWS AND REGULATIONS

7 A. In accordance with CERCLA, as amended, the NCP and the  
8 ROD, all actions required to be taken pursuant to this Consent  
9 Decree shall be undertaken in accordance with the requirements of  
10 all applicable federal, state and local laws, regulations, and  
11 permitting requirements.

12 B. Defendants shall obtain all permits or approvals neces-  
13 sary under federal, state or local laws and shall submit timely  
14 applications and requests for any such permits and approvals.  
15 Notwithstanding any other provision in this Consent Decree, no  
16 federal, state or local permits shall be required for any Work  
17 conducted pursuant to this Consent Decree entirely onsite, as  
18 defined by 40 C.F.R. §300.400(e).  
19

20 XVI. DATA EXCHANGE: SAMPLING AND ANALYSIS

21 A. Under the provisions of Section 104(e) of CERCLA, 42  
22 U.S.C. § 9604(e), EPA explicitly reserves the right to observe  
23 the Work of the Defendants as it is performed. In addition, at  
24 the request of EPA, Defendants shall allow split or replicate  
25 samples to be taken by EPA and/or its authorized representatives,  
26 of any samples collected by the Defendants or anyone acting on  
27 the Defendants' behalf pursuant to the implementation of this  
28

1 Consent Decree. At least seven (7) days in advance of any sam-  
2 pling activity, Defendants shall notify EPA of the intended date  
3 of commencement of the sampling activity. In addition, Defen-  
4 dants shall notify EPA at least 48 hours prior to any modifica-  
5 tions or proposed changes to any sample collection activity.  
6 Defendants shall notify EPA thirty (30) days prior to the dis-  
7 posal of any such samples, and shall provide EPA with an oppor-  
8 tunity to take possession of all or a portion of such samples.

9 B. Defendants shall notify EPA in a timely manner of any  
10 project which is required to be performed pursuant to this Con-  
11 sent Decree and which is likely to produce data or information as  
12 described in this Section.

13 C. Notwithstanding any provisions of this Consent Decree,  
14 the United States hereby retains all of its information gathering  
15 and inspection authorities and rights, including enforcement ac-  
16 tions related thereto, under CERCLA, and any other applicable  
17 statutes.

18 D. Within 60 days of the effective date of this Consent  
19 Decree, Defendants shall propose to EPA a plan and system to  
20 manage and organize data collected pursuant to this Decree. Upon  
21 approval by EPA, Defendants shall implement the data management  
22 plan and system.

## 23 24 XVII. RETENTION OF RECORDS

25 A. Defendants shall preserve and retain all records and  
26 documents in Defendants' possession at the time of entry of this  
27 Consent Decree which EPA is authorized to obtain under Section  
28

1 104(e) of CERCLA, 42 U.S.C. § 9604(e), with respect to the Site,  
2 regardless of any document retention policy to the contrary, for  
3 ten (10) years after the entry of this Consent Decree.

4 B. The Defendants shall preserve, and shall instruct all  
5 contractors, all contractors' subcontractors, and anyone else ac-  
6 ting on the Defendants' behalf at the Site to preserve (in the  
7 form of originals or exact copies, or in the alternative,  
8 microfiche of all originals) all records, documents and informa-  
9 tion of whatever kind, nature, or description required to be gen-  
10 erated pursuant to this Consent Decree. During the 10 year  
11 period following completion of the Work, or earlier if requested  
12 or agreed to by EPA, originals or copies of all such records,  
13 documents, and information shall be delivered to EPA's Project  
14 Coordinator or designee, at which point Defendants' record  
15 preservation and retention obligations under this Consent Decree  
16 shall end.

17 C. After the 10 year period set out in Paragraph B above,  
18 or earlier if agreed to by EPA, Defendants shall notify EPA no  
19 later than sixty (60) days prior to the destruction of such docu-  
20 ments. Upon request by EPA, the Defendants proposing to destroy  
21 records shall make available to EPA originals or copies of any  
22 such records prior to their destruction.

23  
24 XVIII. RESERVATION OF RIGHTS

25 A. Notwithstanding any other provision in this Decree, Sec-  
26 tion XXVIII (Covenant Not to Sue) shall not relieve any Defendant  
27 of its obligation to meet and maintain compliance with the re-  
28

1 quirements set forth in this Decree. Except as provided in Sec-  
2 tion XXVIII (Covenant Not To Sue), the United States reserves all  
3 rights to take enforcement actions for violations of this Decree,  
4 of CERCLA and/or of any other authority, including the right to  
5 seek response costs, injunctive relief, monetary penalties, and  
6 punitive damages for any civil or criminal violation of law or  
7 this Consent Decree.

8 B. Except as provided in Section XXVIII (Covenant Not To  
9 Sue), nothing in this Consent Decree shall be deemed to limit the  
10 response authority of EPA under Sections 104 or 106 of CERCLA, 42  
11 U.S.C. § 9604 or 9606, or under any other federal response  
12 authority. In any event, the United States reserves the right to  
13 seek reimbursement from the Defendants for any such response  
14 costs incurred by the United States.

15 C. The United States expressly reserves all rights and  
16 defenses that it may have, including the right both to disapprove  
17 of Work performed by Defendants on the grounds that it does not  
18 comply with this Consent Decree, and to request, pursuant to Sec-  
19 tion VIII (Additional Work), that Defendants perform tasks in ad-  
20 dition to those detailed in the Work Plans prepared pursuant to  
21 this Consent Decree, provided that any such additional work is  
22 necessary to implement the remedy specified in the ROD.

23  
24 XIX. REIMBURSEMENT OF FUTURE RESPONSE AND OVERSIGHT COSTS

25 A. Defendants shall reimburse the Hazardous Substance Su-  
26 perfund for the Future Response Costs (including indirect costs)  
27 incurred by EPA for any activities required to be performed by  
28



1 Section VII (Work to be Performed), Section VIII (Additional  
2 Work) and Section X (Periodic Review to Assure Protection of  
3 Human Health and the Environment) which are performed by EPA, and  
4 for Future Response Costs, including indirect costs, incurred by  
5 EPA to oversee and review the Work performed by or on behalf of  
6 Defendants, and any other response costs incurred by or on behalf  
7 of EPA under or in connection with this Consent Decree, provided  
8 that such response costs are not inconsistent with the NCP.

9 B. No more than annually, EPA shall submit to Defendants  
10 documentation of such Future Response Costs, including oversight  
11 costs, incurred by EPA in the time period since the last demand  
12 for payment. EPA's Cost Documentation Management System ("CDMS")  
13 or equivalent cost summary, which shall include indirect costs,  
14 shall serve as the documentation for payment demands. EPA will  
15 also provide a summary of its calculations of any interest  
16 charges.

17 Defendants shall, within 30 days of receipt of each demand  
18 for payment, remit a check for the amount of those costs made  
19 payable to the Hazardous Substance Superfund. The checks should  
20 reference the "Mill Area Operable Unit of the Coalinga Asbestos  
21 Mine Site," and be addressed to:

22 U.S. Environmental Protection Agency  
23 Region 9  
24 Superfund Accounting  
25 P.O. Box 360863M  
26 Pittsburgh, PA 15251  
27 Attention: Collection Officer for Superfund

28 A copy of the transmittal letter and a copy of the check shall be  
sent simultaneously to the United States and the EPA Project  
Coordinator as provided in Section XXIV (Form of Notice).

1 C. Defendants may contest payment of any Future Response  
2 Costs under this Consent Decree if they determine that the United  
3 States has made an accounting error, or that a cost item that is  
4 included represents costs that are inconsistent with the NCP, or  
5 contains costs that were not actually incurred in connection with  
6 the Site. Such objection shall be made in writing within thirty  
7 (30) days of receipt of EPA's demand for payment and EPA's CDMS  
8 or equivalent cost summary, and must be sent to the United States  
9 as specified in Section XXIV (Form of Notice). Any such objec-  
10 tion shall specifically identify the contested Future Response  
11 Costs and the basis for objection.

12 D. In the event of an objection under Paragraph C of this  
13 Section, the Defendants shall, within thirty (30) days of receipt  
14 of EPA's demand, pay all uncontested Future Response Costs to the  
15 United States, in the manner described in Paragraph B, of this  
16 Section, above. Simultaneously, the Defendants shall establish  
17 an interest bearing escrow account in a bank duly chartered in  
18 the State of California and remit to that escrow account funds  
19 equivalent to the amount of the contested Future Response Costs.  
20 The Defendants shall send to the United States, as provided in  
21 Section XXIV (Form of Notice) a copy of the transmittal letter  
22 and check paying the uncontested Future Response Costs, a copy of  
23 the correspondence that establishes and funds the escrow account,  
24 including information containing the identity of the bank and  
25 bank account under which the escrow account is established and a  
26 bank statement showing the initial balance of the escrow account.

1           E. Simultaneously with establishment of the escrow account,  
2 the Defendants shall initiate the Dispute Resolution procedures  
3 in Section XXIII (Dispute Resolution). Upon Defendants' request,  
4 EPA shall then provide all cost documentation related to the dis-  
5 pute which it would be required to produce under the Freedom of  
6 Information Act, 5 U.S.C. §552, as amended. If the United States  
7 prevails in the dispute, within 5 days of the resolution of the  
8 dispute, the Defendants shall direct the escrow holder to remit  
9 the escrowed monies (with accrued interest) to the United States,  
10 in the manner described in Paragraph B of this Section, above.  
11 If the Defendants prevail concerning any aspect of the contested  
12 costs, the Defendants shall direct the escrow holder to remit  
13 payment for that portion of the costs (plus associated accrued  
14 interest) for which they did not prevail to the United States in  
15 the manner described in Paragraph B of this Section, above, and  
16 Defendants shall be disbursed the balance of the escrow account.  
17 The dispute resolution procedures set forth in this Paragraph and  
18 the procedures set forth in Section XXIII (Dispute Resolution)  
19 shall be the exclusive mechanisms for resolving disputes regard-  
20 ing Defendants' obligation to reimburse the United States for its  
21 Future Response Costs.

22           F.. As an alternative to establishing an escrow account pur-  
23 suant to Paragraph D above, Defendants may instead obtain a let-  
24 ter of credit equal to the amount of Future Response Costs which  
25 are contested plus the amount of interest that would otherwise  
26 accrue in the escrow account until the dispute resolution process  
27 is completed. The Defendants shall send to the United States on  
28

1   behalf of EPA, as provided in Section XXIV (Form of Notice) a  
2   copy of the letter of credit. Payment of the contested Future  
3   Response Costs covered by the letter of credit shall be in accor-  
4   dance with Paragraphs D and E, above.

5  
6                   XX.   REIMBURSEMENT OF PAST COSTS

7           A.   Defendants agree to reimburse the Hazardous Substance  
8   Superfund in the amount of \$995,765.74 for the Past Response  
9   Costs incurred by EPA up to and including November 30, 1990.  
10   Defendants shall reimburse EPA for such past costs according to  
11   the following schedule: (i) at least \$200,000 shall be paid  
12   within 90 days following entry of this Consent Decree; (ii) at  
13   least an additional \$200,000 shall be paid within three months  
14   after the first payment is due; (iii) at least an additional  
15   \$300,000 shall be paid within six months after the first payment  
16   is due; and (iv) at least an additional \$295.765.74 shall be paid  
17   within nine months after the first payment is due; in addition,  
18   Defendants shall pay interest on the amounts set out in sub-  
19   paragraphs (ii) through (iv) above at the time such payments are  
20   made, which interest shall begin to accrue at the time that the  
21   payment in subparagraph (i) is due. Such interest shall accrue  
22   at the rate established pursuant to Section 107(a) of CERCLA, 42  
23   U.S.C. §9607(a). Payments shall be made in the manner and format  
24   specified in Section XIX.B above. Payment of this amount com-  
25   pletely resolves Defendants' liability to the United States for  
26  
27  
28

1 Past Response Costs up to and including November 30, 1990, in-  
2 cluding all indirect costs and all interest that has accrued or  
3 will accrue thereon.  
4

5 XXI. STIPULATED PENALTIES

6 A. Defendants shall be liable to the United States for  
7 stipulated penalties in the amounts set forth in Paragraphs B, C  
8 and D below, for failure to comply with the requirements of this  
9 Consent Decree as specified below, unless excused under Section  
10 XXII (Force Majeure) or Section XXIII (Dispute Resolution).  
11 "Compliance" by Defendants shall include completion of the ac-  
12 tivities under this Consent Decree or any Work Plan or other plan  
13 approved under this Consent Decree in accordance with the re-  
14 quirements of and time schedules established by this Consent  
15 Decree, the SOW, and any plans or other documents approved by EPA  
16 pursuant to this Consent Decree.

17 B. The following stipulated penalties shall be payable upon  
18 written demand by EPA per violation per day to the United States  
19 for all noncompliance violations not covered by Paragraph C  
20 below.  
21

Period of Noncompliance	Penalty Per Violation Per Day
1st through 7th calendar day	\$2,500
8th through 14th calendar day	5,000
15th calendar day and beyond	10,000

1 C. The following stipulated penalties shall be payable per  
2 violation per day to the United States for failure to submit  
3 timely or adequate reports or other documents required pursuant  
4 to this Consent Decree:

5	6	7
	Period of Noncompliance	Penalty Per Violation
		Per Day
8	1st through 7th calendar day	\$1,500
9	8th through 14th calendar day	3,000
10	15th calendar day and beyond	7,000

11  
12 D. In the event that EPA assumes performance of a portion or  
13 all of the Work pursuant to Section VII (Work To Be Performed) or  
14 Section XVIII (Reservation of Rights), the Defendants will be li-  
15 able for stipulated penalties in the amount of \$50,000, or the  
16 stipulated penalties due under this Section, whichever is  
17 greater.

18 E. Except as stated otherwise in Paragraph F below, all  
19 penalties shall begin to accrue on the day after the complete  
20 performance is due or the day a violation occurs, and shall con-  
21 tinue to accrue through the final day of the correction of the  
22 noncompliance or completion of the activity. Nothing herein  
23 shall prevent the simultaneous accrual of separate penalties for  
24 separate violations of this Consent Decree.

25 F. Following EPA's determination that Defendants have  
26 failed to comply with a requirement of this Consent Decree, EPA  
27 may give Defendants written notification of the same and describe  
28

1 the noncompliance. EPA may send the Defendants a written demand  
2 for payment of the penalties. For untimely as opposed to inade-  
3 quate submittals or performance, penalties shall accrue as  
4 provided in the preceding Paragraph regardless of whether EPA has  
5 notified the Defendants of a violation. For inadequate as op-  
6 posed to untimely submittals or for inadequate, as opposed to un-  
7 timely performance of the requirements of this Consent Decree,  
8 EPA shall provide to Defendants, as soon as possible, oral  
9 notification that Defendants' submittal or performance is inade-  
10 quate, with written confirmation within seven (7) days that  
11 Defendants' submittal or performance is inadequate. If EPA so  
12 notifies Defendant within seven (7) days that Defendants' submit-  
13 tal or performance is inadequate, penalties shall accrue commenc-  
14 ing with Defendants' violation, as described above. In the event  
15 that EPA fails to so notify Defendants within seven (7) days of  
16 inadequate submittals or performance, stipulated penalties shall  
17 accrue from the date on which Defendants receive such notice.  
18 These notice provisions will not apply to any violation of this  
19 Consent Decree which causes a substantial harm to human health or  
20 the environment.

21 G. EPA may, in its discretion, waive stipulated penalties  
22 for any noncompliance or determine that the amount of stipulated  
23 penalties demanded is less than the maximum amount potentially  
24 payable by Defendants. All penalties owed to the United States  
25 under this section shall be due and payable within thirty (30)  
26 days of the Defendants' receipt from EPA of a demand for payment  
27 of stipulated penalties, unless Defendants invoke the Dispute  
28

1 Resolution procedures under Section XXIII (Dispute Resolution).  
2 All payments under this Section shall be paid by certified check  
3 made payable to "EPA Hazardous Substances Superfund," and shall  
4 reference the Site and be addressed as indicated in Section XIX  
5 (Reimbursement of Response and Oversight Costs). Copies of  
6 check(s) paid pursuant to this Section, and any accompanying  
7 transmittal letter(s), shall be sent to the United States as  
8 provided in Section XXIV (Form of Notice).

9 H. Neither the invocation of dispute resolution procedures  
10 under Section XXIII (Dispute Resolution), nor the payment of  
11 penalties shall alter in any way Defendants' obligation to com-  
12 plete the performance of the Work required under this Consent  
13 Decree. Further, the Defendants waive any right that they might  
14 have to challenge the amount of penalties per day of violation,  
15 as stipulated in this section, although they may dispute under  
16 the procedures of Section XXIII (Dispute Resolution) EPA's deter-  
17 mination that a violation of this Decree has occurred.

18 I. Penalties shall continue to accrue as provided in  
19 Paragraphs E and F of this Section during any dispute resolution  
20 period, but need not be paid until the following:

21 1. If the dispute is resolved by agreement or by a  
22 decision of EPA that is not appealed to this Court, accrued  
23 penalties shall be paid to EPA within fifteen (15) days of the  
24 agreement or the receipt of EPA's decision or order;

25 2. If the dispute is appealed to this Court and the  
26 United States prevails in whole or in part, Defendants shall pay  
27 all accrued penalties owed to EPA within sixty (60) days of  
28



1 receipt of the Court's decision or order, in the amount specified  
2 in the Court's decision or order, except as provided in Sub-  
3 paragraph 3 below;

4           3. If the District Court's decision is appealed by any  
5 Party, Defendants shall pay all penalties specified in the  
6 Court's decision or order into an interest bearing escrow account  
7 within sixty (60) days of receipt of the Court's decision or or-  
8 der. Penalties in the amount specified in the Court's decision  
9 or order shall be paid into this account as they continue to ac-  
10 crue, at least every sixty (60) days. Within fifteen (15) days  
11 of receipt of the final appellate court decision, Defendants  
12 shall direct the escrow agent to pay the balance of the account  
13 to EPA or to Defendants to the extent that each prevails, as  
14 determined by the appellate court. In lieu of establishing an  
15 escrow account, Defendants may instead obtain a letter of credit  
16 in the same amount(s), including the interest that would other-  
17 wise accrue in the escrow account, which letter of credit shall  
18 be paid in the same manner as the escrow account provided for in  
19 this Paragraph.

20           J. If Defendants fail to pay stipulated penalties when due,  
21 the United States may institute proceedings to collect the  
22 penalties, as well as late charges and interest. Defendants  
23 shall pay interest on the unpaid balance, which shall begin to  
24 accrue at the end of the thirty (30) day period set out in  
25 paragraph G above at the rate established pursuant to Section  
26 107(a) of CERCLA, 42 U.S.C. §9607(a). Such failure to pay stipu-  
27  
28

1 lated penalties when due shall also be a violation of the Decree  
2 and shall result in the accrual of additional stipulated  
3 penalties as provided for in this Section.

4 K. Nothing in this Section shall be construed as prohibit-  
5 ing, altering, or in any way limiting the ability of the United  
6 States to seek any other remedies or sanctions available by  
7 virtue of a violation by Defendants of this Decree or of the  
8 statutes and regulations upon which it is based, including but  
9 not limited to, penalties pursuant to Section 122(1) of CERCLA,  
10 42 U.S.C. §9621(1), provided, however, that if the United States  
11 collects statutory penalties, the total of all penalties which  
12 the United States can collect from Defendants shall not exceed  
13 \$25,000 per day per violation.

14  
15 XXII. FORCE MAJEURE

16 A. For purposes of this Consent Decree, force majeure is  
17 defined as any event arising from causes beyond the control of  
18 the Defendants, or their contractor, subcontractors, agents or  
19 consultants which delays or prevents the performance of any  
20 obligation under this Consent Decree notwithstanding Defendants'  
21 best efforts to avoid the delay. The requirement that Defendants  
22 exercise "best efforts to avoid the delay" means using best ef-  
23 forts to anticipate any potential force majeure event and best  
24 efforts to address the effects of any potential force majeure  
25 event (1) as it is occurring and (2) following the potential  
26 force majeure event, such that the delay is minimized to the  
27 greatest extent practicable.

1           B. The Defendants shall have the burden of proving that the  
2 delay was caused by circumstances beyond the control of the  
3 Defendants. When a force majeure event occurs that will delay or  
4 may delay the completion of any portion of the Work, the Defen-  
5 dants shall, no later than forty eight (48) hours after Defen-  
6 dants become aware or should have become aware of the force  
7 majeure event, notify EPA's Project Coordinator orally and shall,  
8 within five (5) days of oral notification to EPA notify the EPA  
9 Project Coordinator in writing of: the anticipated length and  
10 cause of the delay; the reasons why the delay is beyond the con-  
11 trol of Defendants; which of the tasks are directly affected by  
12 the delay; the measures taken and/or to be taken to prevent or  
13 minimize the delay; and the timetable by which the Defendants in-  
14 tend to implement these measures and any aspects of the event  
15 which may cause or contribute to an endangerment to public  
16 health, welfare or the environment.

17           C. Economic hardship, normal inclement weather, increased  
18 costs of performance and the failure of Defendants to make timely  
19 application for any required permits or approvals and to provide  
20 all information required therefore in a timely manner shall not  
21 be considered events beyond the control of Defendants, their con-  
22 tractors, subcontractors, agents or consultants and shall not  
23 trigger the force majeure provision.

24           D. EPA shall determine whether the event constitutes force  
25 majeure. If EPA determines that the event did not constitute  
26 force majeure then any delay caused by the event claimed to be  
27 force majeure by the Defendants shall constitute noncompliance  
28

1 with the Consent Decree and stipulated penalties shall accrue  
2 from the time of noncompliance in accordance with Section XXI  
3 (Stipulated Penalties) unless a contrary conclusion is reached as  
4 a result of the dispute resolution procedures described below.

5 If EPA determines that the event does constitute force majeure,  
6 it shall determine the appropriate modification to the schedules  
7 for the Work to be performed.

8 E. No deadline shall be extended beyond that period of time  
9 which is necessary to complete the activities with the least  
10 amount of delay possible and in no case beyond the delay at-  
11 tributable to the force majeure event. Use of the force majeure  
12 provision shall not relieve Defendants of their duty to complete  
13 all other tasks in a timely manner in accordance with the  
14 schedule set forth in this Consent Decree, as modified by the  
15 force majeure. The Defendants shall use best efforts as defined  
16 above to avoid or minimize delay.

17 F. Failure of the Defendants to comply with the require-  
18 ments of this Section shall preclude Defendants from asserting  
19 any claim of force majeure.

20 G. If EPA and the Defendants cannot agree as to whether the  
21 reason for the delay was a force majeure event, the determination  
22 of the EPA shall control. If the Defendants dispute this deter-  
23 mination, the dispute shall be resolved by the procedures out-  
24 lined in Section XXIII (Dispute Resolution) of this Consent  
25 Decree. In any such proceeding, to qualify for a force majeure  
26 defense, Defendants shall have the burden of demonstrating by a  
27 preponderance of the evidence that the delay or anticipated delay  
28

1 has been or will be caused by a force majeure event, that the  
2 duration of the delay was or will be warranted under the cir-  
3 cumstances, that Defendants used best efforts to avoid and  
4 mitigate the effects of the delay, and that Defendants complied  
5 with the requirements of this Section.  
6

7 XXIII. DISPUTE RESOLUTION

8 A. As required by Section 121(e)(2) of CERCLA, 42 U.S.C.  
9 §9621(e)(2), the Parties to this Consent Decree shall attempt to  
10 resolve expeditiously and informally any disputes arising with  
11 respect to this Consent Decree. A dispute shall be considered to  
12 have arisen when one party notifies the other parties in writing  
13 that there is a dispute.

14 Any dispute which arises with respect to this Consent  
15 Decree, shall in the first instance be the subject of informal  
16 negotiations between EPA and Defendants. The period of informal  
17 negotiations shall not exceed fourteen (14) days unless an exten-  
18 sion is agreed to in writing by the parties. In the event that  
19 the parties cannot resolve any dispute with respect to this Con-  
20 sent Decree by the end of that fourteen (14) day period, then the  
21 position of EPA shall be considered binding unless Defendants in-  
22 voke the dispute resolution provisions of Paragraph B below.  
23 Defendants' decision to invoke dispute resolution shall not con-  
24 stitute a force majeure under Section XXII (Force Majeure),  
25 herein. The amount of stipulated penalties as stated in Section  
26 XXI (Stipulated Penalties) (as opposed to EPA's determination that  
27 Defendants have violated the Decree) is not subject to dispute  
28

1 resolution. Use of the dispute resolution provision will not  
2 relieve Defendants' duty to complete other tasks in a timely man-  
3 ner in accordance with the schedule set forth in this Consent  
4 Decree.

5 B. Defendants shall notify EPA in writing of their objec-  
6 tions to EPA's position within fourteen (14) calendar days of the  
7 end of the period of informal negotiations described in Paragraph  
8 B above. EPA and Defendants will then have an additional twenty  
9 (20) calendar days from receipt by EPA of the notification of ob-  
10 jection to reach agreement. At the end of the twenty (20) day  
11 discussion period, EPA shall provide Defendants with a written  
12 statement of its position and the supporting documentation relied  
13 upon by EPA. Within seven (7) days thereafter, Defendants may  
14 file a reply. Within ten (10) days after that seven (7) day  
15 period, the Director of the Hazardous Waste Management Division  
16 shall issue a final administrative decision regarding the dis-  
17 pute.

18  
19 C. Petition Filed In Court:

20 1. In the event that the dispute cannot be resolved by  
21 the procedures outlined in Paragraphs A and B above, then the  
22 final administrative decision by EPA, referred to in Paragraph B  
23 above, shall be considered binding unless, within 10 days after  
24 Defendants' receipt of that EPA decision, the Defendants file  
25 with the Court a petition which shall describe the nature of the  
26 dispute and include a proposal for its resolution. Defendants  
27 shall not file such a petition until issuance of the final ad-  
28

1    ministrative decision referred to in Paragraph B above.    The  
2    filing of a petition asking the Court to resolve a dispute shall  
3    not of itself extend or postpone the Defendants' obligations un-  
4    der this Decree with respect to the disputed issue, or stay the  
5    provisions of Section XXI (Stipulated Penalties), except that the  
6    payment terms of Section XXI, Paragraph I, shall apply during the  
7    period that the dispute is under consideration by the Court.

8                    2.    Unless the Court establishes a different period for  
9    response, Plaintiff shall have thirty (30) days to respond to the  
10   petition.    Defendants shall then have ten (10) days to file a  
11   reply.    For any matter covered by Section 113(j)(2) of CERCLA, 42  
12   U.S.C. §113(j)(2), in proceedings on any dispute covered by this  
13   Section the Court shall uphold EPA's decision unless the Defen-  
14   dants can demonstrate, on the administrative record, that EPA's  
15   decision was arbitrary and capricious or otherwise not in accor-  
16   dance with law.    For any other matters, the Court shall apply ap-  
17   plicable standards of law regarding the standard of review and  
18   the scope of material to be considered.    In any proceedings on a  
19   dispute, Defendants shall bear the burden of coming forward with  
20   evidence and of persuasion on factual issues.

21                    3.    If the Court finds for EPA, the Defendants shall  
22   transmit payment of all penalties which have accrued during the  
23   dispute, plus interest at the rate specified in Section XXI  
24   (Stipulated Penalties) to the Hazardous Substance Superfund,  
25   within fifteen (15) working days of resolution of the dispute.  
26   The Defendants shall then implement the disputed matter as  
27  
28

1 resolved and perform the work which was the subject of the dis-  
2 pute, if required. The appropriate plans should be amended to  
3 reflect the resolution of the dispute.

4 4. If the Court finds for Defendants: (1) the dead-  
5 lines for any affected deliverables shall be extended to account  
6 for any delays attributable to the dispute resolution procedures;  
7 and (2) any penalties which would otherwise accrue for violation  
8 of any affected deliverable shall be waived.

9  
10 XXIV. FORM OF NOTICE

11 A. When written notification to or written communica-  
12 tion with the United States, EPA or the Defendants is required by  
13 the terms of this Consent Decree, it shall be sent, postage  
14 prepaid, and addressed as follows:

15 As to Plaintiffs:

16 Chief  
17 Environmental Enforcement Section  
18 Environment and Natural Resources Division  
19 Department of Justice  
10th and Pennsylvania Avenue, N.W.  
Washington, DC 20530

20 EPA Project Coordinator  
21 Superfund Enforcement Section  
22 U.S. Environmental Protection Agency  
75 Hawthorne Street  
San Francisco, CA 94105

23 Assistant Regional Counsel for the  
24 Coalinga Asbestos Mill Site  
Office of Regional Counsel  
25 U.S. Environmental Protection Agency  
75 Hawthorne Street  
26 San Francisco, CA 94105

27 Frank Lopez  
California Department of Health Services  
10151 Croydon Way  
28 Sacramento, California 96827



1 Chris Chalfant  
2 California Regional Water Quality Control Board  
3 Central Valley Region  
4 3614 East Ashlan Avenue  
5 Fresno, California 93726

6 As to the Defendants:

7 Jerome F. Donohoe, Esq.  
8 Vice President - Law  
9 Santa Fe Pacific Corporation  
10 1700 East Golf Road  
11 Schaumburg, Illinois 60173-5860

12 Edward L. Strohbehn Jr., Esq.  
13 McCutchen, Doyle, Brown & Enersen  
14 Three Embarcadero Center  
15 San Francisco, California 94111

16 These names and addresses may be changed by the United States,  
17 EPA and/or Defendants by notifying the other parties in writing.  
18

19 XXV. MODIFICATION

20 No modification shall be made to this Consent Decree without  
21 written notification to and written approval of the Parties and  
22 the Court; provided, however, that modifications of the Scope of  
23 Work (Appendix B) may be made upon the written consent of the  
24 Parties and shall be filed with this Court; and provided further,  
25 that the Parties may agree to alter any deadline specified in or  
26 pursuant to this Consent Decree without notice to or approval by  
27 the Court. The notification required by this Paragraph shall set  
28 forth the nature of and reasons for the requested modification.  
No oral modification of this Consent Decree shall be effective.  
Nothing in this Paragraph shall be deemed to alter the Court's  
power to supervise or modify this Consent Decree.

1 XXVI. ADMISSIBILITY OF DATA

2 For the purpose of this Consent Decree only, the Parties  
3 waive any evidentiary objection as to the authenticity of data  
4 gathered, generated, or evaluated by any Party in the performance  
5 or oversight of the Work under this Decree that has been verified  
6 using the Quality Assurance and Quality Control procedures  
7 specified in Section XI (Quality Assurance and Quality Control).  
8 The parties shall be able to impeach or otherwise contest the  
9 credibility, validity, or meaning of such evidence.

10 For the purpose of this action only, the Parties also waive  
11 any objections to the introduction of such data based on hearsay.  
12

13 XXVII. CONTRIBUTION PROTECTION

14 With regard to claims for contribution against Defendants  
15 for matters addressed in this Consent Decree, the Parties hereto  
16 agree that the Defendants are, as of the effective date of this  
17 Consent Decree, entitled to and shall receive such protection  
18 from contribution actions or claims as is provided in Section  
19 113(f)(2) of CERCLA, 42 U.S.C. §9613(f)(2).

20 The Defendants agree that with respect to any suit or claim  
21 for contribution brought by them for matters related to this Con-  
22 sent Decree they will notify the United States in writing no  
23 later than the date that such suit or claim is served. The  
24 Defendants also agree that with respect to any suit or claim for  
25 contribution brought against them for matters related to this  
26  
27  
28

1 Consent Decree they will notify the United States in writing  
2 within 10 days of the date on which the complaint in such an ac-  
3 tion is served on them.

4  
5 XXVIII. COVENANT NOT TO SUE

6 A. Subject to the provisions of Section XVIII (Reservation  
7 of Rights) and of this Section, the United States covenants not  
8 to sue, not to take any administrative action, and not to execute  
9 judgment against the Defendants for any and all civil liability  
10 to the United States for causes of action arising under Sections  
11 104, 106 and 107(a) of CERCLA, 42 U.S.C. §§9604, 9606, 9607(a),  
12 and Section 7003 of the Resource Conservation and Recovery Act,  
13 42 U.S.C. §6973, relating to the Site, or for matters covered by  
14 this Consent Decree. Subject to the provisions of Section XXIII  
15 (Dispute Resolution), this Covenant Not To Sue shall take effect  
16 so long as Defendants continue to perform, completely and satis-  
17 factorily, their obligations under this Consent Decree. With  
18 respect to Future Liability, this Covenant Not To Sue shall take  
19 effect only when all of the following have occurred: (1) EPA  
20 issues a Certificate of Completion of the Remedial Action pur-  
21 suant to Section XXXIX (Certificate of Completion), and (2) the  
22 receipt by EPA of the payments required by Sections XIX  
23 (Reimbursement of Future Response and Oversight Costs) and XX  
24 (Reimbursement of Past Costs). This Covenant Not To Sue is con-  
25 ditioned upon complete and satisfactory performance by Defendants  
26  
27  
28

1 of their obligations under this Consent Decree. This Covenant  
2 Not To Sue extends only to Defendants and their successors and  
3 assigns and does not extend to any other person.

4 B. Defendants covenant not to sue the United States, in-  
5 cluding any and all departments, agencies, officers, ad-  
6 ministrators, and representatives thereof, for any claim, coun-  
7 terclaim, or cross-claim asserted, or that could have been as-  
8 serted, prior to the effective date of this Consent Decree, aris-  
9 ing out of or relating to the Site, including any direct or in-  
10 direct claim for reimbursement from the Hazardous Substance Su-  
11 perfund (established pursuant to the Internal Revenue Code, 26  
12 U.S.C. § 9507) through CERCLA Sections 106(b)(2), 111 or 112, 42  
13 U.S.C. §9606(b)(2), 9611 or 9612, or otherwise, except as such  
14 claim, counterclaim or cross-claim arises from or relates to one  
15 or more claims expressly reserved by EPA under Paragraphs C, D,  
16 and E below and only if EPA asserts that specific claim or  
17 claims. Nothing in this Consent Decree shall be deemed to con-  
18 stitute preauthorization of a claim within the meaning of Section  
19 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. § 300.5.

20 C. Notwithstanding any other provision of this Consent  
21 Decree, the United States reserves the right to institute  
22 proceedings in this action or in a new action or to issue an Or-  
23 der seeking to compel the Defendants to perform any additional  
24 response work at the Site, or to reimburse the United States for  
25 Response Costs if:

1 (1) Prior to certification of completion of the Remedial Ac-  
2 tion by EPA pursuant to Section XXXIX (Certification of  
3 Completion),

4 a. conditions at the Site, previously unknown  
5 to the United States, are discovered after the entry  
6 of this Consent Decree, or

7 b. information is received, in whole or in part,  
8 after the entry of this Consent Decree,  
9 and these previously unknown conditions or this information indi-  
10 cates that the remedy selected in the ROD will not adequately  
11 protect human health or the environment; or

12 (2) Subsequent to certification of completion of the  
13 Remedial Action by EPA pursuant to Section XXXIX (Certification  
14 of Completion),

15 a. conditions at the Site, previously unknown to  
16 the United States, are discovered after the issuance of  
17 certification of completion by EPA, or

18 b. information received, in whole or in part,  
19 after the issuance of certification of completion by EPA,  
20 and these previously unknown conditions or this information indi-  
21 cates that the remedy selected in the ROD as implemented is not  
22 protective of human health or the environment.

23 D. Notwithstanding any other provision in this Consent  
24 Decree, this Covenant Not To Sue shall not relieve the Defendants  
25 of their obligations to meet and maintain compliance with the re-  
26 quirements set forth in this Consent Decree, specifically includ-  
27 ing the conditions set forth in the ROD, which is incorporated  
28

1 herein. The United States reserves all its rights to take  
2 response actions at the Site, including the right to take  
3 response action in the event of a breach of the terms of this  
4 Consent Decree by the Defendants and to seek recovery of costs  
5 which: 1) result from such a breach; 2) relate to any portion  
6 of the Work funded or performed by the United States as a result  
7 of such breach; or (3) are enforcement costs associated with the  
8 Site which the United States incurs as a result of such breach.

9 E. Defendants are expressly not released from, and the  
10 provisions of Paragraph A of this Section shall not apply to, any  
11 matter not covered by this Consent Decree, including the follow-  
12 ing claims:

13 1. Claims based on a failure by Defendants to meet the  
14 obligations of this Decree;

15 2. Claims based on the Defendants' liability arising  
16 from the past, present, or future disposal of waste materials  
17 outside of the Site and not attributable to the Site;

18 3. Any claim or demand for damage to federal property  
19 located any place that Work is being performed;

20 4. Claims based on criminal liability;

21 5. Claims based on liability for damage to natural  
22 resources as defined in CERCLA;

23 6. Claims based on liability for hazardous substances  
24 removed from the Site; or

25 7. Liability for any violations of Federal or State  
26 law which occur during or after implementation of the Work.

1 F. Nothing in this Consent Decree shall constitute or be  
2 construed as a release or covenant not to sue regarding any claim  
3 or cause of action against any person as defined in Section  
4 101(21) of CERCLA, 42 U.S.C. §9601(21), or other entity not a  
5 signatory to this Consent Decree, or any successor or assign of  
6 such entity, for any liability it may have arising out of or  
7 relating to the Site.

8  
9 XXIX. WAIVER OF DEFENSE

10 EPA hereby informs Defendants that it may bring claims with  
11 respect to areas of the Johns-Manville Coalinga Asbestos Mill NPL  
12 Site (Coalinga Mine Site) other than the JM Mill Area OU as  
13 defined in the ROD. Should Plaintiff bring any claim with  
14 respect to any areas of the Johns-Manville Coalinga Asbestos Mill  
15 NPL Site (Coalinga Mine Site) other than the JM Mill Area OU as  
16 defined in the ROD, Defendants hereby waive the defenses of res  
17 judicata, collateral estoppel, and claim-splitting with respect  
18 to such claims.

19  
20 XXX. COMMUNITY RELATIONS

21 As requested by EPA, Defendants shall cooperate with EPA  
22 in providing information to the public and shall participate in  
23 the preparation of appropriate information disseminated to the  
24 public and in public meetings which may be held or sponsored by  
25 EPA to explain activities at or concerning the Site.

1                   XXXI. LODGING AND PUBLIC PARTICIPATION

2           A. Pursuant to Section 122(d) of CERCLA, 42 U.S.C. §  
3 9622(d), this Consent Decree will be lodged with the Court for  
4 thirty (30) days, and the United States shall publish a notice of  
5 availability of review to allow public comment prior to entry by  
6 the Court. The United States will file with the Court and  
7 provide to Defendants a copy of any comments received and the  
8 responses of the United States to such comments.

9           B. Plaintiff will provide persons who are not parties to  
10 the proposed settlement with the opportunity to file written com-  
11 ments during at least a thirty (30) day period following such  
12 notice. Plaintiff will file with the Court a copy of any com-  
13 ments received and its responses to such comments.

14           C. After the closing of the public comment period, Plain-  
15 tiff will review all comments and determine whether the comments  
16 disclose facts or considerations which indicate that the proposed  
17 judgment is inappropriate, improper or inadequate, and therefore  
18 that the Consent Decree should be modified. If a modification is  
19 deemed necessary by Plaintiff based on public comment, Plaintiff  
20 will notify Defendants. If no modification is deemed necessary,  
21 Defendants consent to the entry of this Consent Decree without  
22 further notice.

23  
24                   XXXII. CONSISTENCY WITH THE NCP

25           The United States and the Defendants agree that the Work, if  
26 performed in full accordance with the requirements of this Con-  
27 sent Decree, is consistent with the provisions of the National  
28



1 Oil and Hazardous Substances Pollution Contingency Plan 40 C.F.R.  
2 Part 300, which has been revised and repromulgated pursuant to  
3 Section 105 of CERCLA, 42 U.S.C. § 9605.  
4  
5

6 XXXIII. INDEMNIFICATION AND INSURANCE

7 A. Notwithstanding any approvals which may be granted by  
8 the United States or other government entities, Defendants shall  
9 indemnify the United States and save and hold the United States  
10 Government, its officials, agents, contractors, representatives,  
11 agencies or departments harmless for any and all claims or causes  
12 of action arising from any acts or omissions of the Defendants,  
13 their officers, employees, agents, receivers, trustees, succes-  
14 sors, assigns, contractors, subcontractors, or any other person  
15 acting on their behalf or under their control in carrying out ac-  
16 tivities pursuant to this Consent Decree. This indemnification  
17 does not extend to any loss, injuries or damages suffered or in-  
18 curred by any person to the extent that such loss, injuries or  
19 damages are proximately caused by the actions or conduct of the  
20 United States, its agencies, departments, employees, agents, con-  
21 tractors or subcontractors. The United States is not, and shall  
22 not be held out as, a party to any contract entered into by or on  
23 behalf of Defendants in carrying out activities pursuant to this  
24 Consent Decree. Neither Defendants nor any such contractor shall  
25 be considered an agent of the United States.  
26  
27  
28

1           B. Defendants shall indemnify and hold harmless the United  
2 States with respect to any claims for damages or reimbursement  
3 asserted against the United States, or for any set-off of any  
4 payments made or to be made to the United States, arising from or  
5 on account of any contract, agreement or arrangement between  
6 Defendants and any person for performance of Work pursuant to  
7 this Consent Decree, including claims on account of construction  
8 delays.

9           C. Before starting any of the onsite Work required by this  
10 Consent Decree, Defendants shall secure and maintain, or require  
11 their contractor(s) or subcontractor(s) to secure and maintain,  
12 until EPA's issuance of the Certificate of Completion pursuant to  
13 Section XXXIX (Certificate of Completion) comprehensive general  
14 liability and automobile insurance with limits of two million  
15 dollars (\$2,000,000) per occurrence, combined single limit,  
16 naming as additional insured the United States. In addition, for  
17 the duration of this Consent Decree, Defendants shall satisfy, or  
18 shall ensure that their contractors or subcontractors satisfy,  
19 all applicable laws and regulations regarding the provision of  
20 workmen's compensation insurance for all persons performing work  
21 on behalf of Defendants in furtherance of this Consent Decree.  
22 Prior to commencement of work under this Consent Decree, and an-  
23 nually thereafter, until EPA's issuance of the Certificate of  
24 Completion, Defendants shall provide to EPA certificates of such  
25 insurance and a copy of each insurance policy. If Defendants  
26 demonstrate by evidence satisfactory to EPA that any contractor  
27 or subcontractor maintains insurance equivalent to that described  
28

1 above, or insurance covering the same risks but in a lesser  
2 amount, then with respect to that contractor or subcontractor  
3 Defendants need provide only that portion of the insurance  
4 described above which is not maintained by the contractor or sub-  
5 contractor.

6  
7 XXXIV. OTHER CLAIMS

8 Nothing in this Consent Decree shall be deemed to constitute  
9 a preauthorization of a CERCLA claim within the meaning of Sec-  
10 tions 111 or 112 of CERCLA, 42 U.S.C. §§ 9611, 9612, or 40 C.F.R.  
11 § 300.5. In consideration of the entry of this Consent Decree,  
12 Defendants agree not to make any claims pursuant to Section 112  
13 or Section 106(b)(2), 42 U.S.C. §§ 9612, 9606(b)(2), or any other  
14 provision of law directly or indirectly against the Hazardous  
15 Substance Superfund, or make other claims against the United  
16 States for those costs expended by Defendants in connection with  
17 this Consent Decree, provided, however, that nothing in this Sec-  
18 tion shall affect Defendants' rights to dispute matters under  
19 this Consent Decree pursuant to Section XXIII (Dispute  
20 Resolution).

21  
22 XXXV. CONTINUING JURISDICTION

23 The Court specifically retains jurisdiction over both the  
24 subject matter of and the Parties to this action for the duration  
25 of this Consent Decree for the purposes of issuing such further  
26 orders or directions as may be necessary or appropriate to con-  
27  
28

1 strue, implement, modify, enforce or terminate the terms of this  
2 Consent Decree or for any further relief as the interest of jus-  
3 tice may require.  
4

5 XXXVI. REPRESENTATIVE AUTHORITY

6 A. Each undersigned representative of the Defendants to  
7 this Consent Decree certifies that he or she is fully authorized  
8 by the Party to enter into and execute the terms and conditions  
9 of this Consent Decree, and to legally bind such Party to this  
10 Consent Decree.

11 B. Defendants shall identify, on the attached signature  
12 page, the name and address of an agent who is authorized to ac-  
13 cept service of process by mail on behalf of that Defendant with  
14 respect to all matters arising under or relating to this Consent  
15 Decree. Defendants hereby agree to accept service in that manner  
16 and to waive the formal service requirements set forth in Rule 4  
17 of the Federal Rules of Civil Procedure, including service of a  
18 summons, and any applicable local rules of this Court.  
19

20 XXXVII. EFFECTIVE DATE

21 This Consent Decree is effective upon the date of its entry  
22 by the Court.  
23  
24  
25  
26  
27  
28

1 XXXVIII. SEVERABILITY

2 If any provision or authority of this Consent Decree or the  
3 application of this Consent Decree to any circumstance is held by  
4 the Court to be invalid, the application of such provision to  
5 other circumstances and the remainder of the Consent Decree shall  
6 remain in force and shall not be affected thereby.  
7  
8

9 XXXIX. CERTIFICATION OF COMPLETION

10 A. Within ninety (90) days after Defendants conclude that  
11 the Remedial Action has been fully performed, Defendants shall so  
12 notify EPA and shall schedule and conduct a final inspection to  
13 be attended by Defendants and EPA. Such inspection shall be fol-  
14 lowed by a written report submitted to EPA as specified in the  
15 approved RD Work Plan, which includes a certification that the  
16 Remedial Action has been completed in full satisfaction of the  
17 requirements of this Consent Decree. If EPA determines that the  
18 Remedial Action or any portion thereof has not been completed in  
19 accordance with this Consent Decree, EPA will notify Defendants  
20 in writing of the activities that must be performed to complete  
21 the Remedial Action and may set forth in the notice a schedule  
22 for performance of such activities. Subject to the requirements  
23 and procedures of Section VIII (Additional Work), Section XXV  
24 (Modification), and Section XXIII (Dispute Resolution), and if  
25 Defendants are required to perform such work as EPA requests,  
26  
27  
28

1 Defendants shall perform all activities described in the notice  
2 in accordance with the specifications and schedules established  
3 therein, or as modified in accordance with this Decree.

4 B. If EPA concludes, following the initial or any subse-  
5 quent notification of completion by Defendants that the Remedial  
6 Action has been fully performed in accordance with this Consent  
7 Decree, EPA shall so certify in writing to Defendants. This cer-  
8 tification shall constitute the "certification of completion of  
9 remedial action" pursuant to Section 122(f)(3) of CERCLA, 42  
10 U.S.C. §9622(f)(3), and for this Consent Decree.

11 C. The issuance of such certification of completion shall  
12 not alter other terms or Defendants' obligations as set forth in  
13 the provisions of Section XVII (Retention of Records), Section  
14 XVIII (Reservation of Rights), Section XXVIII (Covenant Not to  
15 Sue), Section X (Periodic Review to Assure Protection of Human  
16 Health and the Environment), Section XIX (Reimbursement of  
17 Response and Oversight Costs), Section XXVII (Contribution  
18 Protection) and such other continuing rights and obligations of  
19 Defendants under this Consent Decree.

20  
21 XL. TERMINATION AND SATISFACTION

22 This Consent Decree shall terminate upon certification by  
23 EPA of completion of the Work To Be Performed and that Defendants  
24 have satisfied their obligations under Section XIX ( Reimburse-  
25 ment of Future Response and Oversight Costs), Section XX  
26 (Reimbursement of Past Costs), Section XXI (Stipulated  
27 Penalties), Section X (Periodic Review to Assure Protection of  
28

1 Human Health and the Environment) and Section VIII (Additional  
2 Work). Termination of Defendants' obligations under the above  
3 stated provisions of this Consent Decree shall not alter the  
4 provisions of Section XVII (Retention of Records), Section XVIII  
5 (Reservation of Rights), Section XXVII (Contribution Protection),  
6 Section XXVIII (Covenant Not to Sue), and such other continuing  
7 rights and obligations of Defendants under this Consent Decree.  
8

9 XLI. SECTION HEADINGS

10 The section headings set forth in this Consent Decree and  
11 its Table of Contents are included for convenience of reference  
12 only and shall be disregarded in the construction and interpreta-  
13 tion of any of the provisions of this Consent Decree.  
14

15 XLII. COUNTERPARTS

16 This Consent Decree may be executed and delivered in any  
17 number of counterparts, each of which when executed and delivered  
18 shall be deemed to be an original, but such counterparts shall  
19 together constitute one and the same document.  
20

21  
22 SIGNED and ENTERED this \_\_\_\_\_ day of \_\_\_\_\_, 1991.  
23  
24  
25

26 UNITED STATES DISTRICT JUDGE

27  
28 By the signatures below, the Parties hereby consent to the  
foregoing Consent Decree.

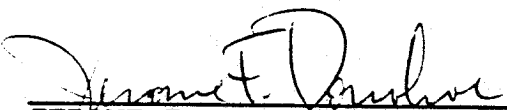
1 SIGNATURE PAGE FOR CONSENT DECREE BETWEEN UNITED STATES, AS  
2 PLAINTIFF, AND PINE CANYON LAND COMPANY, SANTA FE PACIFIC COR-  
3 PORATION, AND CATELLUS DEVELOPMENT CORPORATION, AS DEFENDANTS:

4 FOR DEFENDANT, PINE CANYON LAND COMPANY

5  
6   
7 JEROME F. DONOHOE  
8 Counsel

DATE: February 26, 1992

9  
10  
11 FOR DEFENDANT, SANTA FE PACIFIC CORPORATION

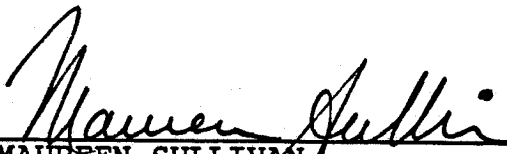
12  
13   
14 JEROME F. DONOHOE  
15 Vice President - Law

DATE: February 26, 1992



1 SIGNATURE PAGE FOR CONSENT DECREE BETWEEN UNITED STATES, AS  
2 PLAINTIFF, AND PINE CANYON LAND COMPANY, SANTA FE PACIFIC COR-  
3 PORATION, AND CATELLUS DEVELOPMENT CORPORATION, AS DEFENDANTS:

4 FOR DEFENDANT CATELLUS DEVELOPMENT CORPORATION

5  
6   
7 MAUREEN SULLIVAN  
8 Vice President Law and General Counsel

DATE: February 26, 1992

1 SIGNATURE PAGE FOR CONSENT DECREE BETWEEN UNITED STATES, AS  
2 PLAINTIFF, AND PINE CANYON LAND COMPANY, SANTA FE PACIFIC COR-  
PORATION, AND CATELLUS DEVELOPMENT CORPORATION, AS DEFENDANTS:

3 FOR PLAINTIFF, UNITED STATES:  
4  
5

6 *Barry M. Hartman*  
BARRY HARTMAN  
7 Acting Assistant Attorney General  
8 Environment and Natural Resources  
U.S. Department of Justice  
9

DATE: MAY 20 1992

10 *William A. Weinischke*  
11 WILLIAM A. WEINISCHKE  
12 Attorney, Environmental Enforcement Section  
U.S. Department of Justice  
13  
14

DATE: \_\_\_\_\_

15 GEORGE L. O'CONNELL  
16 United States Attorney  
17

18 BY: \_\_\_\_\_  
19 Assistant United States Attorney  
20  
21

DATE: \_\_\_\_\_

22 *John W. McGovern*  
23 DANIEL W. MCGOVERN *Acting for*  
24 Regional Administrator  
25 U.S. Environmental Protection Agency  
Region IX  
26  
27  
28

DATE: 3.3.92